IN THE HIGH COURT OF UTTARANCHAL, AT NAINITAL.

Criminal Revision No. 31 of 2002

Basant Lal S/o Musai Prasad
R/o Quarter C-103,
Baradge Colony
Rishikesh, Dehradun ……Revisionist.

Vs.

1. Sessions Judge, Dehradun
2. Jainath Kumar So Bilayati Shah
3. Phullo Kumari D/o Bilayati Shah ……Respondents.

Hon'ble Mr. JusticeJ. C. S. Rawat)

None appeared for the revisionist despite service. Heard Sri J.P. Joshi learned counsel for the respondent nos.2 & 3.

This criminal revision has been filed under section 397 of the Code of Criminal Procedure against the order dated 26.3.2002 passed by the Sessions Judge, Dehradun in S.T. No. 164/2001, whereby the revisionist was summoned to face the trial.

On perusal of the record reveals that the learned D.G.C. moved an application to summon the revisionist-Basant Lal as an accused under section 319 of the 'Code' to face the S.T. No. 164/2001. The Sessions Judge recorded the statement of PW1 Jai Nath, PW2 Km. Phullo Kumari and PW3 Kaushalya Devi during the trial. The learned Sessions Judge by its order dated 26.3.2002 directed that the revisionist alongwith other accused persons be summoned to face the trial and the application of the D.G.C. was accordingly allowed.

There is no evidence of any of the witnesses which may indicate that the revisionist had any role in the commission of the offence.

I have gone through the statement of Km. Phullo who stated that on 10.8.2001 at about 8-8:30 AM she went near the Peepal tree and asked the revisionist-Basant Lal that Inder was telling to company him. On this, Basant Lal told her that she might go with Inder. The prosecution also adduced the evidence of PW1 Jai Nath and PW3 Kaushalya Devi. I have also gone through the statement of the revisionist and there is no prosecution evidence to the effect that the revisionist has committed the offence punishable under sections 363, 366, 376 IPC. There is only one

allegation in the statement of the PW2 Km. Phullo as indicated above. The said statement is not sufficient to summon the revisionist. Therefore, the learned Sessions Judge has erred in holding to summon the revisionist under section 319 of the Code for the offence punishable under sections 363, 366, 376 IPC. Thus, the order dated 26.3.2002 passed by Sessions Judge, Dehradun deserves to be set-aside only against the revisionist-Basant Lal.

For the aforesaid reasons, the revision is allowed and the order dated 26.3.2002 passed by the Sessions Judge, Dehradun in S.T. No.164/2001 only against the revisionist-Basant Lal is set aside.

(J. C. S. Rawat, J.)

Dated 27.8.2004

LSR